



**COMMONWEALTH of VIRGINIA**  
*Office of the Attorney General*

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**MEMORANDUM**

**TO: BRIAN MCCORMICK**  
Regulatory Supervisor  
Virginia Department of Medical Assistance Services

**FROM: USHA KODURU**  
Assistant Attorney General

**DATE: June 16, 2011**

**SUBJECT: Exempt Final Regulation to Modify the Deadline to File an Appeal**

I have reviewed the attached exempt final regulation regarding the timeframe in which a provider must file an appeal of a termination or denial of their Medicaid provider agreement. You have asked the Office of the Attorney General to review and determine if the Department of Medical Assistance Services ("DMAS") has the legal authority to amend the regulation and if the regulation comports with state and federal law.

Chapters 305 and 785 of the 2010 General Assembly session amend Virginia Code § 32.1-325 regarding provider appeals of a termination or denial of a Medicaid provider agreement. Based on my review, it is my view that the Director of DMAS, acting on behalf of the Board of Medical Assistance Services, pursuant to Virginia Code §§ 32.1-324 and 325, has the authority to amend this regulation, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA") and has not exceeded that authority.

Based on the foregoing, it is my view that the amendment of this regulation is exempt from the procedures of Article 2 of the APA pursuant to Va. Code § 2.2-4006(A). This regulation will amend the State Plan; therefore, approval by the Centers for Medicare and Medicaid Services also will be required.

Brian McCormick  
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If you have any questions about this matter, please contact me at 786-4074.

cc: Kim F. Piner, Esquire

Attachment